

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

Jason Ho

(In the space above enter the full name(s) of the plaintiff(s).)

- against -

Lower Merion School District

COMPLAINT

Jury Trial: Yes No

(check one)

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

A. List your name, address and telephone number. If you are presently in custody, include your identification number and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff	Name	Jason Ho
	Street Address	775 Mustin Lane
	County, City	Montgomery County, Villanova
	State & Zip Code	PA 19085
	Telephone Number	215-313-3858

B. List all defendants. You should state the full name of the defendants, even if that defendant is a government agency, an organization, a corporation, or an individual. Include the address where each defendant can be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1	Name _____ Lower Merion School District
	Street Address _____ 301 East Montgomery Ave
	County, City _____ Montgomery County, Ardmore
	State & Zip Code _____ Pennsylvania 19003
Defendant No. 2	Name _____
	Street Address _____
	County, City _____
	State & Zip Code _____
Defendant No. 3	Name _____
	Street Address _____
	County, City _____
	State & Zip Code _____
Defendant No. 4	Name _____
	Street Address _____
	County, City _____
	State & Zip Code _____

II. Basis for Jurisdiction:

Federal courts are courts of limited jurisdiction. Only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case involving the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state and the amount in damages is more than \$75,000 is a diversity of citizenship case.

A. What is the basis for federal court jurisdiction? (check all that apply)

Federal Questions

Diversity of Citizenship

B. If the basis for jurisdiction is Federal Question, what federal Constitutional, statutory or treaty right is at issue? _____

Individuals with Disabilities Act (IDEA) _____

C. If the basis for jurisdiction is Diversity of Citizenship, what is the state of citizenship of each party?

Plaintiff(s) state(s) of citizenship _____

Defendant(s) state(s) of citizenship _____

III. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. Where did the events giving rise to your claim(s) occur? _____ Lower Merion School District

B. What date and approximate time did the events giving rise to your claim(s) occur? See attached

C. Facts: See attached

What
happened
to you?

See attached

C. Facts: _____

Who did what?

Was anyone else involved?

Who else
saw what
happened?

IV. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. _____

See attached

V. Relief:

State what you want the Court to do for you and the amount of monetary compensation, if any, you are seeking, and the basis for such compensation.

See attached

We, Thanh Ho and Lan Tu Trinh, parents of Jason Ho and representing him pro se, claim the school district did not give appropriate education and support for Jason Ho throughout his education in Lower Merion School District (2004-2020), which includes Penn Valley Elementary School, Welsh Valley Middle School, Harriton High School, and Delaware County Intermediate Unit. At the outset our family was discriminated against when we moved into this School District, Lower Merion School District, and enrolled our son in the Penn Wynne Elementary School in 2005, and this discrimination continued throughout his time in the Lower Merion School District from November 2006 to August 2020. During the first year of his enrollment in Penn Wynne Elementary School in 2005 and thereafter, during his tenure in Lower Merion School District from 2006 – 2020, the school district failed to cooperate with me to address our autistic disabled son's, Jason Ho, educational needs.

We believe that Jason Ho's education was interfered with by teachers, upper staff, and board members in the Lower Merion School District. Our son was also discriminated against because of his Vietnamese nationality and because he was in a predominately Jewish community and because of this he was discriminated against at various schools within this district as well as discriminated against because of his condition of autism. Hence, his protected rights as a citizen and a disabled person was violated, rights guaranteed under the Statutes and laws of the United States and the State of Pennsylvania.

- In 2004 LMSD planned to move Jason to Perkiomen School District .
- In 2004-2005, Jason was then moved to Archworks in Philadelphia School District after our Doctor sent a note saying that it would be a hardship for Jason to remain in that School District because if he needed medical assistance, it would be difficult.
- He was later, in November 2006, moved to Lower Merion School District because a

lawyer said that he legally had the right to attend the School District where he lived.

- The School District claimed that they did not have a class for Jason. But our lawyer at the time, Donna Marie Davis, said if the School District refused to provide him with an education, they needed to fund a private education for Jason.
- This amounted to 48,000 dollars in which the school District did not want to pay, so they acquiesced under pressure and allowed Jason to stay in the school district but would end up not providing the proper education for Jason's needs.

Lower Merion School District's actions toward Jason and his education proved and demonstrated that they were forced to have Jason remain in the School District against their will, and this forced compliance impacted how they would treat Jason's education, from this time and forward. Specifically, note the following example of this bad treatment:

The School District reluctantly complied with this directive by moving Jason from School to School, all the while neglecting his educational needs and progress and hence stymied any academic program, because he was constantly being transferred from school to school for some reason or the other. He was not at any school during this time long enough to obtain a steady measurable education.

It finally became evident at this time, however, that they were not being serious in providing Jason with a proper education but were purposefully failing to address Jason's true academic needs and were not providing him with a proper education within this School District. They were, the Schools and the District, pretending along the way to address his academic needs but they were in fact in reality not really giving him an adequate education in these various schools transfers. They fulfilled this directive only by allowing him to remain in the school district while not providing him with a proper education. They did not want to pay any expenses

related to giving Jason the education which included the necessary expenses to educate an individual with autism.

An example of the bad faith of the school and its district was:

When, Monique, a member of the Staff who was assigned to Jason at one of the schools, was addressing Jason's educational needs but was hindered in her attempts to promote Jason's educational needs by, a senior Staff member, Debra Lubowicki. Monique, who was assigned to Jason, was a very friendly and supportive person toward Jason, in one of the Schools Jason was transferred in, and proved to be addressing some of our son's educational and academic needs. Jason positively responded by beginning to feel comfortable with this new situation, this, however was short lived because when Debra Lubowicki, Special Education Director, caught the attention of how Monique was treating Jason, she then proceeded to disrupted this situation by moving him into an unfavorable class situation which caused distress to Jason and hindered the progress that he was making at the time, thereby denying him the education that they were forced to give him. Of course, we were disturbed by this situations and amazed that someone who is paid by tax paying monies to promote the interests of United States Students would do this and have such an attitude. We of course express our concerns to the School District.

Such was the conditions and situations under which Jason was forced to endure to receive an education at the Lower Merion School District.

When our family moved to Montgomery County in 2004 from Philadelphia, Pennsylvania, where Penn Wynne Elementary School and Lower Merion School District are located, the Lower Merion School District would not accept Jason as a student within its Jurisdiction and immediately wanted to relocate him to another school district over an hour away or back to Philadelphia. This was unacceptable and also was in violation of the provisions

inherent in the H.R.40, Equal Educational Opportunity Act, which forbade discrimination based on race or national origin and disabilities. It also places the responsibility to give the student a free and appropriate education within the school district where the student lives.

Section 416 of title II and IV of Pub. L. 93–380 provided that:

Title II: Unlawful Practices- States that no State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by:

- (1) *the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;*
- (2) *the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with title IV of this Act, to remove the vestiges of a dual school system;*
- (3) *the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides,* if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student;
- (4) *discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff, except to fulfill the purposes of subsection*
- (5) below;

(6) *the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or*

(7) *the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.*

However, the parents prevailed against the School District on this issue only after seeking due process, in part because Jason's doctor indicated that traveling this long distance would be inappropriate for Jason when he needed close medical attention, this allowed Jason to remain in this school district. Yet, despite this determination which compelled the School District to allow Jason to remain in the School District, we felt the district by its actions discriminated against my family, including our son Jason, by its subsequent actions and in-actions toward our son's education. This occurred in the various Schools he attended and by the School District itself.

Title IV: Remedies- Provides that in formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve the transportation of students, a court, department or agency of the United States shall require implementation of the first of the remedies set out below, or on the first combination thereof which would remedy such denial:

(1) *assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;*

(2) *(2) assigning students to the schools closest to their places of residence which provide*

the appropriate grade level and type of education for such students, taking into account only school capacities;

- (3) (3) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;
- (4) (4) *the creation or revision of attendance zones or grade structures without requiring transportation beyond that described in this title;*
- (5) (5) *the establishment of new or magnet schools or the closing of inferior schools; or*
- (6) (6) *the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of this title.*

These are some of the things that occurred during his attendance at Penn Valley Elementary School, Welsh Middle School and Harriton High School:

Penn Valley Elementary School, Lower Merion School District (LMSD)

2007 – 2009

- Did not receive behavioral, speech and language support from Staff
- OT Services at appropriate levels
- The School and District Office Refused to provide the proper tools despite repeated request(s) from parents

Jason did not receive adequate behavioral, speech and language support from the School Staff and the effect of this neglect caused Jason to regress and not make the expected progress in academic and behavioral goals. For example: In the school year of 2005, the school (name of school or schools) was notified because Jason was in need of behavioral, speech and language

support because of his condition of autism: Although, ***Section 504 of the Rehabilitation Act*** allows for Assistive Technology, Jason received no Assistive Technology to help with his educational development during his tenure at Penn Valley Elementary School. This continued throughout his grade level education and at various schools.

We were aware of Jason's needs and the school(s) failure to accommodate him so we made repeated phone calls to the school(s) to discuss Jason's progress with his special education teacher (name) and on many occasions in person sought to explain my current concerns to her. We, however, only got responses that were tantamount to weak explanations as to why this equipment was not provided to resolve some of the concerns about his academic progress.

When we continued to emphasize the need for the school to provide support and the proper equipment and services to help Jason's academic progress, she referred me to the school office. When we spoke to the principal over the phone at length about Jason's academic progress at the school and we noticed that Jason was dejected in his attitude and how this sprung from situations at school which concerned me, we were met with no resolution to this situation that caused us grave concern. We felt frustrated as my concerns about Jason's needs were not seriously addressed!

Occupational therapy (OT) was necessary for Jason's progress and if it was made available it would have **helped Jason's Autism that was marked by physical, sensory, or cognitive issues**. OT would have helped him in his quest to regain independence in all areas of his life, if it was properly made available it would have made him productive at school and home but it was not made available. The Occupational therapist would have helped Jason with barriers and issues that he had which affected his emotional, social, and physical needs. The School and its District Office did not make these services available, hence Jason suffered as a direct result.

However, despite our repeated attempts during 2006-16 to address these specific matters which seriously concerned me about Jason's changed behavior and lack of academic progress, I received little to no cooperation or help from either from his immediate teacher Ms. Helen Scott and Mr. Patrick Snyder, or the school's principal and, because this lack of cooperation and failure to address seriously Jason's academic progress, this caused Jason to continue to decline academically at this school and his grades and behavior went below expectation levels, going from bad to worse.

Furthermore, the District's ineptitude became more evident as Jason went from school to school within this District and yet experienced a systemic failure to address his issue of autism, since none of the schools within this School District were properly equipped to address Jason's situation. There is little doubt that there were others within this School District with similar autistic problems as Jason's, but it appears that the District as a whole was ill equipped to address and handle issues relative to autism.

Because the School District discriminated against the disability of our child, this prevented the District and the schools under its jurisdiction from addressing Jason's problems which led to Jason receiving a lack luster education which violated Jason's Constitutionally guaranteed right to a proper education under the Equal Educational Opportunity Act. Since this School District failed to provide Jason's with the necessary tools needed for him to be successful in life, this no doubt will present a challenge in his later years as an adult.

Our appeals to the District Office of LMSD went unanswered

We appealed to the District Office of LMSD in an attempt to resolve this matter involving Jason's academic future at Penn Valley Elementary School. Although, the law does provide for

cooperation between school and parent in matters related to the educational development of the child, the School District failed in that it did not attempt in honesty to proactively address my sons specific needs and concerns regarding his educational development. How?

By not providing:

- (1) **Proper Equipment (they provided archaic equipment in which Jason and myself was unable to operate)** and
- (2) **Increased speech and language support** and
- (3) **Guarantees of support** from the School District should Penn Valley fail to follow through with its suggestions to implement my concerns.

The School District refused our reasonable parental requests and showed prejudice against our child's educational needs. The District's personnel did this by doing whatever it wanted and in so doing it failed to address Jason's specific educational needs, specifically, by refusing to provide the necessary services needed to promote his educational progress and goals as is required by law. Therefore, as a result of this neglect, Jason's little progress that he made waned and his behavior worsened.

This was a dereliction of duty on the part of the School District which resulted in considerable harm to our child's education and his self-worth, which caused him to engage in self-injurious behavior and as a result this inaction on the part of the District impeded and further hindered his scholastic development and a wholesome relationship with his peers, his family, and his overall independence as a developing adult. It was also represented on its face a discrimination against our family as other children received such services in the School District but my son did not.

We strongly feel, believe and had optimistic reasonable expectations, while mindful of

Jason's autistic conditions which were mild at the time, that if Jason had received the proper behavioral, speech and language support from the Schools and Staff where he attended school, especially during grade school years, the academic School Year of 2005-2011, Jason would have made steady progress academically and this would have positively impacted his behavior at school and home, including his speech and language abilities and he would have been on pace to be successful in the current school year and the following upper grades at this and other Schools he attended. Jason is a kind child but, needless to say, Jason was deprived of his right to receive the proper education because his needs were not address during this academic school year.

Welsh Valley Middle School

School Years 2009-2013:

However, this treatment of Jason continued in Welsh Valley Middle School to deteriorate because this school took little or no note of this regression in behavior but instead blamed this behavioral decline on Jason himself! How?

- Claiming language barriers but not specifically addressing this problem
- Making unannounced visits to Jason's home while the family was asleep
- Ignoring the evaluation reports and not working in collaboration with the family to resolve these issues
- Ignoring the parents requests for more education and therapy, their concerns about his treatment at school which worsened his behavior and skills.
- Failing to provide Assistive Technology (AT) devices, namely, laptops to Jason at home, although other students were allowed to have them.
- They failed to allow him to have one during the entire tenure at LMSD

The School Staff at Welsh Valley Middle School lacked in professionalism in the way

they treated Jason while he was at this school. Although, no doubt, they were aware of his language challenges because of his autism, nonetheless, instead of trying to meet these challenges professionally and attempting to address his issues and concerns proactively they, instead, used his deficiencies in communication, barriers caused by his autism, as an excuse not to address academically his problems. It soon became very apparent that they lacked in the qualities and training needed to function as a support team for individuals with disabilities.

They further exhibited a negative behavior when school personnel showed up unannounced at Jason's home while the family was sleep seeking to find fault instead of seeking to resolve issues in the interest of Jason's academic progress. Why? Jason was at home within a positive and supportive environment free of the issues that confronted him at school.

Evaluation Reports

The purpose of evaluation reports is to make sure that the student the parent and the school are on the same page and are aware of the student's progress and that the schools are proactively implementing the agreed upon academic plan of action for Jason's academic progress. It is not designed to attack or downgrade Jason in any negative way. The School, however, acted in a self-preserved, self-serving way to protect only its own interests while at the same time not looking after the interests of the child whose custody they were entrusted by his parents to develop him educationally. The Staff failed to do this in by not collaboration with the parents and/or implementing their suggestions embodied in the plan of action as to how Jason could make progress but instead they commenced to ignore this plan and do things their own way. For their failure they blamed Jason and by implication his parents.

They added, according to the phrase, "insult to injury" when they failed to provide him

with the necessary equipment during his tenure in school in order for him to be successful academically. He needed communication equipment in order for him to make academic progress in school and this was not provided to him despite repeated requests by his parents. This showed discrimination toward Jason and his educational development by not allowing him to have this equipment as other students were allowed to have laptops while Jason who was autistic needed one but was not permitted to have one. This was discriminatory and further impeded his academic progress in school.

Harriton High School

2013-2017

- Untrained aides who would treat Jason harshly which caused Jason to self-injure himself by hitting himself for attention. This subsequently, led to Jason getting inappropriately restrained.
- Inappropriately handling Jason by restraining him in a wheelchair during his time at Harriton High School, even though Jason was able to walk without a wheelchair.
- Restraining him for long periods of time which prevented him from obtaining a needed education.
- He was left at the toilet for long periods of time which prevented him from obtaining needed education.
- The Staff would take him to the nurse's office for any mild symptoms and have him wait there until his parents picked him up in the middle of the day. The parents would have to leave work and drive there to pick him up in the middle of the day. This prevented him from obtaining an education. This despite the fact that the staff knows Jason has seasonal

allergies and asthma that is treatable. The Staff used this has an excuse because they wanted to avoid treating him and or allowing him to remain in the classroom to obtain an education.

The purpose of the educational system is to provide educational opportunities to all in the United States, including those with disabilities. It is the responsibility of School District to provide trained personnel who have experience in dealing with specific disabilities including individuals with autism such as our son Jason. Instead of seeking to address his issues and concerns, untrained aides would treat my son harshly which untimely caused Jason to self-injure himself by hitting himself for attention as he could not communicate is feelings. This could have been solved if they would have provided Jason with trained personnel and the necessary equipment and if the personnel itself was trained to deal with issues typically of individuals with autism.

On occasion, they would restrain Jason for long periods of time in response to what they believe to be some type of negative behavior on his part. They were not in fact addressing the root causes of the issues involved with Jason's behavior but only the so-called negative behavior on the part of Jason and this caused them to restrain him which worsened his actions at the time. This was because they were not in fact trained to deal with or handle the autistic behavior of my son who had the disability of autism. They blame this behavior that they did not understand in a professional capacity on him instead of evaluating whether or not they were trained or properly qualified to deal with this type of behavior in an understanding way.

Although, our son Jason was able to walk they inappropriately used a wheelchair for him before his peers which further exasperated the situation and cause distress and anguish to our son, further alienating him from his peer and the staff. It gave the wrong appearance to those

who looked on and dubbed him as an angry individual. Jason is a mild and gentle individual and is not an angry uncooperative person. This was done to give them an excuse not to deal with his condition of autism. This further limited his education as he was not able to move and otherwise engage in educational activities. This further limited and impeded his educational progress because he was viewed in an improper light and therefore limited by the teachers and staff because of his being dubbed as a unmanageable student.

He was not provided the proper educational opportunities when they left him in the toilet for extended periods of time. This prevented him from getting the proper education he needed to make progress. This was only an excuse not to deal with him and/or address the issues at hand. This further showed that this School District was ill-equipped to deal with individuals with autism. Failure to provide the necessary education is a violation of Jason's rights to a proper education.

He had to wait at the nurse's office for pick up by his parents because the staff refuse to provide the needed services necessary for Jason to continue in the classroom environment to receive educational opportunities he needed to make progress. It was documented and the Staff was aware that Jason had treatable allergies, however, instead of treating his allergies, they used this has an excuse to take Jason out of the classroom environment and station in at the nurse's office for pickup by his parents in the middle of the day.

This prevented Jason from receiving the education he needed to make progress. It further caused the parent to leave work in the middle of the day to address this issue. This again showed prejudice toward Jason as other students were treated with the same issue and allowed to remain in the classrooms to receive an education. This further deprived Jason of his right to receive educational opportunities in violation of the law.

These actions and in-actions served as an excuse not to allow Jason in the classroom to obtain the necessary education he needed. This resulted in Jason not feeling welcomed and uncomfortable. The Staff would then label him aggressive and this worsened his behavior over the years to self-injurious behavior due to this prolonged discriminatory and unfriendly treatment on the part of the Staff.

Because the Staff were able to manipulate the mood of our young impressionable child by manipulation his mood to negative reactions they were able to blame him for this behavior and use this has an excuse not to provide him with the necessary education. This was convenient for them and gave them an outlet for not providing education to our son. This was because they were unqualified to deal with these types of situation. The School and District's failure to provide these necessary tools for Jason's education felt very discriminatory.

Although, things improved when he transferred to Delaware County Intermediate Unit (DCIU) in 2017, and his behavior began to improve in this safer environment, he still was not provided a communication device necessary for him to make continued academic progress. This failure to provide this communication device early on hindered him from making notable progress has he only received this device near the end of schooling. Although, he needed more speech therapy during this time, he received very little which also stymied his progress. In the final analysis, Jason has received very little schooling before and during the COVID Pandemic at which time he received only brief virtual sessions from March to August 2020 for the school year and ESY.

The parents also asked the School District for COVID compensatory services for Jason, however, the school district refused to answer for months and, then, after delaying their response for months, they responded by denying the parent's request for those timely services. The

quality of the education and hours of this education they did provide was very lack luster and very little, consisting of only a few minutes of virtual sessions per day. Overall, Jason received little to no meaningful education during this time either by virtual or in-person education. Therefore, he has been deprived of a meaningful quality education because of these situations and circumstances.

The parents would like a remedial solution as soon as possible as Jason as reached an age that will challenge a future solution to his educational needs. This includes additional educational opportunities for Jason to cover the cost to bring Jason up to speed to the place he would have been had he not been impeded in his progress because of these situations and conditions. And, anything necessary to compensate him and his family for suffering thorough the incompetency and neglect this School District has brought upon them.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 29 day of January, 2023.

Signature of Plaintiff /s/ Thanh Ho and Lan Tu Trinh, on behalf of Jason Ho

Mailing Address 775 Mustin Lane,
Villanova, PA 19085

Telephone Number 215-313-3858

Fax Number (*if you have one*) _____

E-mail Address lantutrinh@yahoo.com & thanhho1055@gmail.com

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint. Prisoners must also provide their inmate numbers, present place of confinement, and address.

For Prisoners:

I declare under penalty of perjury that on this _____ day of _____, 20_____, I am delivering this complaint to prison authorities to be mailed to the Clerk's Office of the United States District Court for the Eastern District of Pennsylvania.

Signature of Plaintiff: _____

Inmate Number _____